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A CONSTITUTIONAL OASIS.

During the recent debate in the House of Representatives over the appropriation for the relief of the suffering in Russia, Congressman Wells Goodykoontz of West Virginia, a member of the Committee on the judiciary, raised the point of the unconstitutionality of the measure. Thereby he struck a note that is so rarely heard in Legislative circles that it seems to have caught even the ear of the secular press. The inspiration of other opposition to the appropriation did not appear to emanate from a conscious spirit of the Constitution and its limitations upon governmental expenditures but from a dread of the burden of excessive taxation. The fact that the results are the same does not connote a common impulse. It just happens to be a coincidence.

Minds untrained in jurisprudence and its science missed Mr. Goodykoontz's fundamental point, which is the spirit of the Great Charter, that to take from taxpayers for other than strictly governmental purposes is in violation of the natural rights of man and, therefore, beyond all governmental power (1 Tucker Const'n, pp. 493-5). The voice giving expression to that underlying principle of taxation during the present decade, is like one crying in the wilderness. The only limitation respected by the average legislator, as the Congressman complained, appears to be the rules governing the Legislative body.

Under these circumstances, one's inquisitiveness will be forgiven for intruding into the private life and education of this particular Congressman in order that his training and inspiration may be found. Where did he get the idea? Let there be found the food upon which he fed that the present and coming generation may profit by his example. That is the only hope for a recrudescence of respect and veneration for the spirit of the Constitution, such as existed three decades ago, when the reputation of statesmen was based upon their knowledge and power of application of the spirit of the organic law of the land.

It was developed that Congressman Goodykoontz was a student under that great author and teacher of the Constitution, the late John Randolph Tucker. Truly the deeds of men live after them. Though in different voice and form, the spirit of John Randolph Tucker on this occasion lived as truly again in the Congress of the United States as when the great law giver was Chairman of the Judiciary Committee of the House.

Let us encourage a renascence of the old reverence, for it is a revival of the spirit of the Constitution that the legislators need. The organic law is so many dead letters even to too many ripe scholars. Unconsciously they incite the ritual of devotion, but apply the rule of expediency. Then there are some who take pride in "stretching" the great Instrument to cover their fads, and others who ignore it altogether.

For the first class there is no excuse; for the second, partisanism and zeal confuse good judgment. The third are merely assassins of the law, actuated by ignorance or vice.

A ripe, militant public opinion, given expression through the eloquence of a consecrated Bench and Bar, will awaken both the first and second classes to their recalcitrancy. Nothing but a rebirth, through intensive educational efforts, will soften the obstinancy of selfishness. Unfortunately the personnel of the third class has passed the dead line of student susceptibility and strayed into the calloused indifference of ignorance. Respect for constituted authority

being their only admonition, a great responsibility falls upon the first two classes to sink personal views in the interest of a firm and fixed policy. Upon the faithful followers of the statesmen of the old school, the task will ever rest.

THOMAS W. SHELTON.

DOUBTFUL DIVORCES.

That the "full faith and credit" clause of the Federal Constitution and the repect due by the courts of one state to those of another, do not close the eyes to fraudulent attainment of divorces, is the view of the Virginia Supreme Court of Appeals expressed in Corvin v. Commonwealth; (24 Va. App. 7, 108 S. E. 651). Apart from its other merits, this decision opens the door to a collateral atack upon divorces obtained through an "artificial" residence and appeals strongly as a preventive against the tendency to "plural" wives. Both State authorities and anti-divorce societies may now find their way clear to analyze every divorce obtained by a citizen outside his own state. That the opinion was by a member of the Executive Committe of the Judicial Section of the American Bar Association—Judge Robert R. Prentis—lends additional interest to its pronouncement, apart from his own personality.

One Corvin, following the example of a goodly number of much better conditioned people, having grown dissatisfied with his own spouse or casting covetous eyes upon that of another, departed hence and resided the statutory number of months in another state than his own, whereupon, upon substituted service, he petitioned in due and orderly manner for and obtained from a court of that state a decree for an absolute divorce from his Virginia wife, that he had left behind him. The ground happened to be desertion. It might have been any other. Corvin married the woman he had coveted and returned to Virginia. The Authorities refusing to recognize his West Virginia divorce he was promptly indicted and convicted of bigamy and incidentally will pass his new honeymoon in the penitentiary.

The point is that Virginia does not recognize, as beyond attack, a divorce granted to one of her citizens by the courts of another state but reserves the right to examine into it both as to jurisdiction and grounds. It is the reasoning and its far reaching, benevolent effects that commands interest, particularly the Court's measure of a *bona fide* residence; the manner of testing it and its manifest Constitutional position.

"Fraud," said Judge Prentis, "vitiates judicial proceedings, even where they appear regular in form." The measure and character of fraud essential to avoid a divorce decree therefore becomes essential. "The accused practiced fraud in obtaining the divorce in West Virginia, which is relied on by him, by offering false testimony for the purpose of obtaining it." The first item goes to the very heart of the much agitated "foreign" divorce question which now confronts society as a condition and not a theory, for it interprets residence as a permanency and not a visit. Said the Virginia Court, "there is much * * in his conduct to justify the conclusion that he had no other reason for going to West Virginia than the securing of the divorce there, which he could not obtain here, and that *he always intended to return to Virginia.*" By way of illustration let us inquire how many Nevada divorces will stand up under that measure? How many of the vast divorce colony remain in Nevada a day after the signing of the final decree? How many of them "always intended returning" to their home state? The answer would probably be "none." By all such it would appear that a palpable fraud upon the jurisdiction of the Nevada court has been committed and the courts of Nevada would welcome the exposure and punishment of such offenders.

The foul business, at first tolerated as a lesser of two evils as to a certain class of people, has proved to be a temptation to many others. It has grown to be a menace to society and a reflection upon Government, particularly upon the courts on account of apparent security. These divorces, it would appear, are probably void in Virginia and ought to be held worthless by every tribunal whenever it is made to appear that a temporary residence was used to obtain it. Manifestly this can be shown since the decree is subject to collateral attack and is not protected by the "full faith and credit" clause. The Virginia court clearly brushed away that barrier. Said the Court, "In order to test the good faith of the defendant and his motive in connection with the divorce proceedings in West Virginia, it was proper to introduce the material facts referred to, which culminated in that suit, *as well as by conduct immediately thereafter,* so as to determine whether the decree had been obtained in good faith or by deceit and fraud."

The vital element in a divorce is a legal residence in the state whose Court granted it, for jurisdiction rests upon that fact. Moreover every state, apart from the reserved rights under the police power, has or is supposed to have exclusive control over the domestic relations of its people. That this was one of the two tests in the Virginia case may be justly concluded from the language used, viz: "It may be said that if the accused did not go to West Virginia with the determination to make it his legal domicil, or if *he went there merely for the purpose of obtaining a divorce,* intending to remain no longer than was necessary to accomplish his purpose. *or* if the divorce was obtained by fraud, the decree of the West Virginia court is void."

The featural merit of the Virginia decision, as has been said, is that it invites collateral attack in such a way as to make vulnerable almost every extra-territorial divorce. It is subject to attack from two angles. Fraud in procurement would, of course, render it void. However, although the divorce may have been obtained upon legal grounds, properly and honestly alleged and proved, followed by actual service and process, yet the decree is void if the domicile be dishonest —if the prevailing party took up his abode for that purpose only and thereafter abandoned it.

A highly meritorius result is that it takes away from any one State the power to make divorce laws for all the other states, for it must keep its particular divorcees permanently within its own borders and certainly it must not permit them to return home. Having expatriated himself, the divorcee can show his good faith only by a continued allegiance to his adopted state. It is respectfully suggested that a continued domicile, at least for a reasonable time, is the only evidence that can establish "a bona fide residence in the state at the time he instituted his suit." A return to his own home is hardly susceptible of but one construction. This element cannot be too strongly emphasized.

By way of showing no lack of respect for the Court of a sister state, and fully justifying his decision, if any excuse were needed, Judge Prentis concluded that * * "this divorce decree, thus based upon deceit and fraud, would doubtless be annulled by the courts of West Virginia upon proper presentation of the facts here appearing * *." In other words the Virginia court had only done what West Virginia would have done had the opportunity been offered. The Virginia Court might have gone a step further by apologizing for the conduct of one of its people in perpetrating a fraud on the West Virginia court, the fruits of which it promptly nullified. This is certainly comity and it is not lacking in full faith and credit and respect. One must be mindful that the West Virginia court

was obliged to accept the act and allegation of the complaint of having resided the statutory period, as done in good faith. The Virginia court, however, was in position to construe his immediate return to his own home as satisfactory evidence of *mala fides* and an imposition upon the court of a sister state. It could not justly have taken any other position.

This decision will go a long way towards discouraging "migratory" divorces. Heretofore the divorcee has looked upon his decree as free from collateral attack under the "full faith and credit" clause of the Federal Constitution. He resided, say six months, in his *adopted* state, often without a formal renouncement of his former citizenship; obtained his divorce and immediately returned to his old home and remarried. The public found difficulty in understanding such conduct as being "within the law" and blamed the courts. It need not do so any more. Now, he must continue his residence in the adopted state or subject himself to the charge, to be made in his own native state, of fraud upon the jurisdiction of the Court granting the divorce. And, to be sure, there will be plenty of informants. No finer preventative prescription will ever be offered the "Anti-divorce" society than the decision in the Virginia case, abounding as it does, in the soundest logic, law and philosophy.

One feels constrained to quote the philosophy as well as the law of the learned Virginia judge: "In this changing world human nature changes little, if any, and those who persist in defying public sentiment by violating the written law when it is based upon reason and supported by sound public policy are as sure to receive a punishment adjudged to fit the crime today as was Zemri on that day long ago when he defiantly brought a Midianitish woman into the Hebrew camp, in the sight of Moses and the congregation before the door of the tabernacle."

THOMAS W. SHELTON.

NOTES OF IMPORTANT DECISIONS.

TENANT ENTERING UNDER UNENFORCEABLE LEASE BECOMES TENANT FROM YEAR TO YEAR.—Where a tenant entered upon leased premises under a contract which was unenforceable under the statute of frauds, and which contemplated annual settlements between the parties, it was held in Montgomery v. Hollingsworth, Miss., 90 So. 79, that a tenancy from year to year was thereby created. Said the Court:

"It is the contention of the appellant that the agreement is void because within the statute of frauds, namely, that it is to exist for a period of five years; that since it is a void agreement the defendent has no rights under this agreement—citing Mallett v. Lewis, 61 Miss. 105. Under this decision we think the contract comes within the statute of frauds. In this case, however, the defendant took possession of the property under the agreement, made contracts with the hands for the farming year, and was improving the property for the purpose of making a crop during the year 1921. The agreement shows that there were to be annual settlements, namely, on December 1st. Though the contract be unenforceable under the statute of frauds, since Hollingsworth actually entered into possession of the leased premises, in pursuance of this contract a periodical tenancy was thereby created good from year to year."

EXCLUSIVE RIGHT TO SELL TRUCKS IN FRANCE HELD NOT TO INCLUDE TRUCKS SOLD TO UNITED STATES FOR USE IN FRANCE.—The plaintiff's contract with defendant for the sole right to sell the latter's trucks to the French government and within the territory of France, on commission computed on all sales "in or for" that territory, did not include the right to sell trucks to the government of the United States which were delivered in the United States but for use in France during the World War. Godsol v. Nash Motors Co., Md., 115 Atl. 604.

In part the Court said:

"Learned counsel for the appellant contend that the terms 'in or for," used in the several paragraphs to which we have referred, should be construed to mean "in or for use in" the territory specified in the first paragraph of the contract. We fail to discover anything in the contract itself or in the circumstances under which it was executed to warrant that construction. The specific grant of the exclusive right to sell the trucks or products of the manufacturer is contained in the first and second paragraphs of the contract, and the words "in or for" in the subsequent paragraphs were evidently intended to embrace all sales covered by the terms of

that grant. If the parties had intended by the subsequent paragraphs to enlarge the right given the appellant in the first and second paragraphs, they could easily have done so in clear and unequivocal terms, and if, as contended by the appellant, they had reason to believe that the United States would ultimately enter into the war, and intended to include in the contract sales made by the manufacturer in this country to the government of the United States of trucks and products for use in France, it is unreasonable to suppose that they would have left such an important item of their agreement to doubtful construction. They distinctly provided for sales made in the countries named, to said countries, and to the governments of said countries for use by them without said territory, and they could, with equal distinctness, have provided for sales made in this country to the United States government of trucks, etc., for use in France. The parties used the words "for use" in the second paragraph when referring to sales of trucks, etc., to the governments of the countries named for use in other territory, and would naturally have used the same terms to express their intention to include sales made in other countries for use in France. The reference in paragraph 4 to the prices at which trucks, etc., should be sold 'to a country engaged in war' cannot be construed to extend the exclusive right granted to the plaintiff to any country engaged in war when that exclusive right is expressly limited by paragraphs 1 and 2 to the countries therein named. Construing the remaining paragraphs in accordance with the plain terms of paragraphs 1 and 2 removes all doubt as to the meaning of the parties to the contract, whereas a departure from those terms would result in confusion, and an extension of the plaintiff's right beyond the obvious intention of the parties. The cases of Marshall v. Canadian Cordage, etc., Co., 160 Ill. App. 120, Thompson-Houston Electric Co. v. Berg, 10 Tex. Civ. App. 200, 30 S. W. 454, Caro v. Mattei, 39 Cal. App. 253, 178 Pac. 537, and Garfield v. Peerless Motor Car Co., 189 Mass. 395, 75 N. E. 695, cited and relied on by the appellant do not go to the extent of supporting the plaintiff's claim in this case. In the case of Marshall v. Canadian Cordage, etc., Co., the company sold the product of its factory to a third person, who was a dealer in such goods and by his direction shipped the goods for resale into the territory for which the plaintiff was the exclusive agent of the Cordage Company. The Cordage Company had on previous occasions allowed the plaintiff commissions on sales made by it in the plaintiff's territory, and the court held that under the terms of the contract, "and the construction of it by the parties," the plaintiff was entitled to recover commissions on the sales involved in that case. In the case of Thompson-Houston Electric Co. v. Berg, the Court of Civil Appeals of Texas held (quoting from the syllabus):

"'Where the contract between the manufacturer of electrical supplies and his agent provides that the agent shall receive a percentage of all products to be used in a certain territory, the fact that a contract for the sale of goods to be used in such territory is made by the principle outside of the territory is immaterial'."

BAR ORGANIZATION. *

In tracing the rise of a state Plato, in his *Republic*, says:

"Man, isolated from his fellowmen, is not self-sufficient. Hence the origin of society, and of the state, which required the concurrence of four or five men at least, who established the first elements of a division of labor, which becomes more minute as the members of the community increase. Thus the society comprises at first only husbandmen, builders, clothiers, shoemakers. To these are soon added carpenters, smiths, shepherds, graziers. Gradually a foreign trade arises, which necessitates increased production at home, in order to pay for the imported goods. Production carried out on so large a scale will call into existence a class of distributors, shops, and currency. Thus the state requires merchants, sailors, shopkeepers and hired laborers.

"A state, thus constituted, will be well supplied with the necessaries of life, if its members do not multiply too rapidly for its resources. But if it is to be supplied with the luxuries, as well as the necessaries of life, it must contain in addition cooks, confectioners, barbers, actors, dancers, poets, physicians, etc. It will therefore require a larger territory, and this want may involve it in a war with its neighbors. But war implies soldiers, and soldiers must be carefully trained to their profession. Hence the state must possess a standing army, or class of Guardians.

"*These Guardians, must be selected with reference to high qualities.* 'They must be strong, swift and brave; high spirited but gentle; and endowed with a taste for philosophy.' They must not own any property, for otherwise they might become avaricious, and instead of being watchdogs they will almost be sure to become wolves. They must live a hardy, frugal life, quartered in tents, not houses, and be supported by the contributions of the other citizens. *They must be scrupulously educated; truth, courage and self-control must be inculcated from childhood.* Their speech must be simple and severe. They must be educated in music—in songs, harmonies and musical instruments. No soft or enervating music will be allowed them, and only the simplest instruments—the lyre, the guitar and the pipe

*This is a revision of an interesting address given recently before the Ohio Bar Association by Mr. Daniel W. Iddings, of Dayton.

shall be used. After music the Guardians must be trained in gymnastics. Their diet must be simple and moderate, and therefore healthy, the object being to make them independent of physicians except in case of accident or acute illness.

"From the Guardians thus educated and disciplined are selected the magistrates of the states—the lawmakers, law interpreters and law enforcers. *They must be the oldest, the wisest, the ablest and the most patriotic members of that body.* These constitute the real Guardians—the remainder are called the Auxiliaries—the soldiers. The laborers and craftsmen are called producers."

The modern lawyers are the Guardians thus spoken of by Plato who died in the year 347 B. C. Are the lawyers of today still "selected with reference to high qualities"; are they "scrupulously educated"; are truth, courage and self-control "inculated in them from childhood"; are we the "oldest, the wisest, the ablest and the most patriotic members" of present day society? It is still true of the most of us lawyers that we do "not own any property", the same as in Plato's time, and further that we are "supported by the contributions of the other citizens". I fear that "soft or enervating music" has enticed us from these simple standards, and our daily diet has not ben "simple and moderate" and therefore we are not as "healthy as we should be, or were in time of the Republic of Plato.

A recent president of the Ohio state Bar Association at an annual meeting spoke of the young men coming to the Bar at the present day only too truly as follows:

"The Supreme Court should be requested to establish a rule making it obligatory upon the Clerk of the Supreme Court, whenever an applicant registers as a candidate for examination, to certify the applicant's name to the bar association of the county from which he comes, or if there be no bar association, to the Common Pleas Court of that county, requiring that association or judge to certify to the moral character of such applicant. * * * *Unfortunately men have come to the bar, as we all know, with a certificate of good moral character from their preceptor or somebody else, are able to pass an examination, get their license, come back and pass as attorneys, who are unmitigated scoundrels from the ground up.*

"The judges know nothing of it; the bar know nothing of it, * * * yet later we are all blamed for the misdoings of that man after admission to the bar. We cannot proceed against him until he has committed some overt act, but we can keep him out in the very beginning, and a rule requiring the certificate of the (local bar) association, or a certificate from the presiding judge of that county, that the applicant is of good moral character and fit to be a member of the bar, will go a long way toward preventing the admission of such men."[1]

The great trouble with the incoming new members of our Bar is the loose scrutiny that is given their moral character. In most states now high educational qualifications and a stiff examination on the various subjects of the law insure us against the admission to the Bar of ignorant unlearned men, but there is everywhere a laxity of test as to moral character, an equally important qualification for any lawyer. A pamphleter, Charles F. Carusi, who has "taken leave to print" an open letter on this subject, says:

"I favor the most rigid investigation as to the moral fitness of the candidate. Admittedly the greatest problem is that which concerns itself with the moral character of the applicant. * * * My suggestion is that before any applicant is allowed to take the Bar examination, his name shall be published in some newspaper of general circulation in the community in which he lives. This is a sort of rule to show cause upon the public. If nothing is advanced against the young man, his qualifications as to learning and ability should be passed upon and he should then be admitted to the Bar as a junior or probationer. At the end of five years, the applicant will apply to the Bar Committee for final admission to the Bar. Upon this application no inquiry will be made into his learning or ability, but the committee is in a position to ascertain with what integrity the applicant has conducted himself during admittedly the most trying period of his professional life. Here then will be no case of disbarment, but a case of refusal on the part of the committee to admit the applicant as a senior member of the Bar. The discretion of the committee will,

(1) 41 Ohio Bar Ass'n Rep., pp. 61-2.

of course, be reviewable by the courts. The plan would likewise contemplate that five years should be the extreme period during which the applicant would be licensed to practice law as a junior member of the Bar. At the end of that time, he either becomes a senior or retires from the profession. This is, in fact, the method pursued by the Bar of Paris, with the most happy results, as I have been informed by members of the Paris Bar."

This idea of probating a lawyer for five years in order to determine his moral fitness by actual contact with the many pitfalls that open up to members of our profession is in line with one of the celebrated resolutions of David Hoffman of Baltimore which long ago he prepared for the adoption of students upon admission to the Bar wherin he says:

"I am therefore resolved to cultivate a passion for my profession or after a *reasonable exertion therein without success to abandon it.* But I will previously bear in mind that he who abandons any profession will scarcely find another to suit him. The defect is in himself. He has not performed his duty and has failed in resolutions, perhaps often made, to retrieve lost time. The want of firmness can give no promise of success in any vocation."[2]

In other words a young lawyer should throw his whole heart, soul, mind and energy into his profession in the first few years and then determine whether to go ahead or abandon the practice of law. This idea of self-probation is excellent, and whether enforced probation is ever made the legal test or not, it is a fine thing that every lawyer should, after a few years of practice, square himself with his own conscience as to whether or not he shall continue in the practice of law.

When the Tweed ring controlled even the Administration of Justice in New York City the lawyers met in organized opposition in the latter part of 1869 and early the folllowing year, but it remained for Samuel J. Tilden to weld into being the first association of any consequence in this country, the Association of the Bar of the City of New York, when in a great speech he said:

"The Bar, if it is to continue to exist—if it would restore itself to the dignity and honor which it once possessed—must be bold in defense, and if need be. bold in aggression. If it will do its duty to itself, if it will do its duty to the profession which it follows, and to which it is devoted, the Bar can do everything else. It can have reformed constitutions, it can have a reformed judiciary. it can have the administration of justice made pure and honorable."

From the association of the Bar of New York thus organized in protest against corruption in government there came the organization of the New York State Bar Association a few years later. Then in 1877, Illinois was the second state to form a state association. Vermont was the third state in 1878 and the Ohio State Bar Association was organized in 1880, the fourth state bar organization. These were the earliest definite afforts at bar organization although, as an historian on the subject has said: "The association of lawyers in fellowship, mutual benefit, and the maintenance of the dignity of the profession is almost coeval with our legal system."

The Inns of Court in England have been functioning for centuries; the French Bar as an association body has had as early an origin and the Federation of the Legal Profession in Italy is believed to date back to the Roman period. Sporadic efforts to organize the lawyers of New York City ocurred in 1744 and again in 1763, but the first corporation in this country seems to have been organized in 1802 when the Law Library Company of the city of Philadelphia was chartered, being still in existence under another name. I understand that in 1846 the lawyers of Kentucky perfected a temporary organization with which they successfully defeated a constitutional amendment to drive them out of practice but unfortunately this organization was not made permanent, else to Kentucky would go the honor of having the first state bar association in the Union. An effort was made in New York City in 1835 to organize

(2) 5 Canadian Bar Assn. Report, p. 268.

a legal alliance, and at that time Chancellor Kent in an address to the gathering said:

"When we consider the powerful influence of lawyers in our country, when we consider that to them is committed the great work of sustaining, if I may use the expression, the machinery of our jurisprudence; when we consider the mighty responsibility resting upon them; when we recall the prejudices and opposition, I had almost said hatred of a powerful class of people, we see at once the necessity of combining our influence, our strength, our learning, our eloquence, in a combination or association that shall resist all opposition and strengthen their work in sustaining the great fabric of our juris-prudence, by bringing to its aid the powers and influence resulting from association."[3]

In recent years the efficiency of the state bar associations has been severely challenged and the subject has been made the study of a special committee of the American Bar Association which in a report at the annual meeting of that association in St. Louis, August 24th, 1920, stated, among other things:

"That the legal profession does not, at this time, enjoy that place in the confidence and esteem of the public to which it is plainly entitled. That no great improvement in this situation can be had without bringing the entire Bar into an organization in which all lawyers shall have a part and to which all shall be responsible for their professional conduct."

As a result this committee prepared a model bill for the statutory organization of the bars of the several states, planned along the lines of the successful Provincial Law Societies of Canada. The first battle for bar integration was fought and won in Nebraska when in 1919 that association went on record as favoring the passage of a law to bring automatically all of the lawyers into a state bar association.[4]

The Maryland, Michigan, Kansas, Iowa and Illinois State Bar Associations are also giving consideration to this matter and a special committee has been appointed by the President of the American Bar Association to consider the statutory organization of that great national body. Meanwhile the Florida State Bar Association has approved of a bill to integrate its bar and such a bill went into the Florida legislature recently. The Ohio State Bar Association last January unanimously approved of a bill for the statutory organization of its state bar with powers of self-government incorporated in it, but North Dakota is the first bar in the Union to actually secure legislative enactment on the subject. Their law became effective July 1st, 1921. So North Dakota has taken the lead away from the other states.[5]

North Carolina, Kentucky and Indiana are also considering the subject, and it seems certain that the movement for the statutory organization and unity of the lawyers will soon sweep the nation. To this end the Ohio bill, which was recommended for passage by Senate Judiciary Committee (and printed in full in 4 American Judicature Journal, 168), but failed to reach a vote in the last session of the legislature, has been referred for study and action to the Commissioners of Uniform Laws.

Concerning the Ohio bill a facetious,but able news writer, wrote:

"As was foreseen and expected, the long, loud and wolfish howl over the licensing of lawyers, like plumbers and stationary steam engine firemen, has been sounded. This bill was offered by Senator A. W. DeWeese, of Piqua, at the request of the State Bar Association, and provides that members of the "profesh" must have licenses in order to practice the same, the fee being $10 annually and payable in cash—not in lawyer's checks nor in I. O. U.'s. The counsellors, barristers and attorneys are about the only learned craftsmen that are not badged, numbered and docketed in the numerous bureaus, boards or commissions that clutter up all the room around here. Only this week the Senate reported for passage the measure licensing architects, civil engineers and draughtsmen. But the lawyers, oi yoi! One protesting gent from Canton declares the DeWeese bill to be the 'most pernicious piece of proposed legislation ever offered in Ohio'. Which is saying a large mouthful.

(3) 59 Alb. Law Jour., 374.

(4) 3 American Judicature Journal, p. 148.

(5) 4 American Judicature Journal. 168-173; 5 American Judicature Journal, 15.

He beholds a law trust, a censorship by the big nobs over the little catch-as-catch-can lawyers and a dastardly union tyranny. Prediction is made that it the bill is passed there will be little redress hereafter for the average citizen who requires the aid of an attorney. Perhaps it won't turn out that bad. Maybe the citizens, seeing the game to be stacked, will conduct their affairs so that there'll never be any need of hiring lawyers. However, if the lawyers desire to be licensed, let 'em. It will please them and not disturb anybody else."[6]

This quotation shows how laity views with levity and distrust our efforts for closer organization and yet it is evident to all that have studied the question that to bring all of the lawyers into closer association for mutual reform and advantage is the salvation of our profession.

A newspaper states that several Ohio Judges at Youngstown, concurring recently in a judgement of disbarment remarked that every member of the Bar should be ipso facto a member of the Bar Association, as only thereby would it be re-organized into a live active force for the betterment of the practice and procedure, and for the maintenance of approved ethical standards among the members of the legal profession.

With strong state bar Associations in every state, backing up and making even stronger the great American Bar Association, there are many things that can be accomplished under this united forward banner.

Recent statistics show that the courts of the several states, both trial and appellate, cost each citizen less than eighteen cents a year, while the average cost of state government per capita is $6.05 We should pay our judges more salary, a decent compensation in place of the parsimonious pittance of public funds that is almost universally meted out to them. With judges properly paid there will be no further danger of the recall of judicial decisions which our new Chief Justice Wm. Howard Taft, has recently said is "a forgotten issue that flamed during a short period of political hysteria and then passed by general consent into the limbo of the practically impossible and incongruous".[7]

The duty to see that judges are decently compensated is perhaps the first duty of the united bar. Equally important, and meaning everything to us, is everlasting vigilance against the inroads being made into practice of law by banks and trust companies and the discouragement of employing attorneys by the various commissions that have overrun our government lately. So great a mind as Elihu Root told us in 1916 that government by commissions was here to stay, an inevitable development of complex modern conditions. He also said: "The powers that are committed to these regulating agencies, and which they must have to do their work, carry with them *great and dangerous opportunities of oppression and wrong.* If we are to continue a government of limited powers these agencies of regulation must themselves be regulated."

How can these "opportunities of oppression and wrong" be kept from becoming actual "oppression and wrong", if the lawyers are to continue to be discouraged and even debarred by many of such commissions from appearing before them. The lawyer, since the days of his Greek orator prototype, may have asserted things contrary to his former sentiments, "but not anything contrary to the true interest of the commonwealth". With the true lawyer, *"the public good is an overruling consideration." Constitutional government can alone be preserved by the lawyers doing the lawyer's work.*

Until we get our associations organized by statute so as to include all members, it is well for every state bar association to conduct a continuous intensive campaign for members which can be done by occasional letters of invitation, to desirable prospective members, supplemented by personal invitation by local members delegated to such duties, or better still by an executive secretary, whose main business it is to

(6) Faulkner in Cincinnati Enquirer, March 27th, 1921.

(7) See Max and Western Union Telegraph cases decided by Colorado Sup Ct, April 1921.

secure new members. By this process the Ohio State Bar Association during the past year has added 50 per cent to its membership. We carry the invitation to join right into the swearing-in exercises before the Ohio Supreme Court when the new lawyers formally take oath, the president or some other officer or our association being privileged to speak to the class and urging membership in our association. It is surprising what a large proportion of the new lawyers we thus enroll at the threshold of their legal career.

Until we are altogether in one fold, let us patronize our own members as correspondents when any business arises away from home. In actual experience this will be found to be most satisfactory, and if mentioned when the business is entrusted to the correspondent lawyer, it is greatly appreciated and redounds to the credit of the state bar association.

We also should censor legal advertisements, so as to keep our members from advertising their wares on the same plane as soap and farm lighting systems. For instance, a lawyer in our state issues a card purporting to be a vest pocket Court House Directory and schedule of title examiner's charges and concludes the same as follows: "Compliments of ————, Specializing in Unpopular Cases, mandamus, Contempt, Writs of Prohibition." Another lawyer advertises "Loss, Damage and Over Charge Claims will be collected by ————Lawyer, Commerce Counselor, Freight—Traffic-Expert, Inter-State Commerce Specialist, ———— Building, Phone, Main ————, ————, Ohio." This sort of advertising is certainly not respectable and entirely out of keeping with the ancient traditions of our profession.

I have intimated that the influence of the American Bar is believed to be waning and yet the present Congress has 298 lawyers as members of the House of Representatives, against 26 bankers, 21 farmers, 20 newspaper men, 16 manufacturers, 1 minister of the gospel and 4 physicians. The only one woman in the new Congress keeps a restaurant in her own home town, which is an appreciated occupation. The law-making department of the Government continues to be run, as it has been practically ever since the foundation of the Republic, by lawyers.[8]

Kipling wrote: "The strength of the wolf is the pack; the strength of the pack is the wolf". This is a homely truism of direct application to the legal profession in its past attitude of indifference toward close organization, and in its present awakening to the absolute necessity of integration, or we are lost.

If Kipling had been asked to write about the value of organization to lawyers he likely might have used the same illustrative animal—the wolf—for Kipling belongs to the client public, who unfortunately enough vision all lawyers as "predatory animals". And there is the great trouble with the Bar today and yesterday. A few bad men mispractice law and go on uninterrupted mis-practicing to the discredit everlasting of their numerous worthy brothers at law. The good practictioner must "stand the gaff" brought on by the bad practitioner. Figuratively, to the hoi polloi, we are all "wolves" because one or two of "the pack" are bad. The bad lawyer is rarely, almost never, a member of any of our bar associations. He started wrong by staying out of these organizations when he could have gotten in, just after his moral character had been certified as good and he had sufficient knowledge of the law to pass successfully the bar examination. He drifted because not tied to the moorings of association with his fellow lawyers.

The strength of the Bar is the individaul member; the strength of the individual member is the Bar. The true defender, preserver, yea saviour of the law, is a united Bar, fighting, upholding, rescuing and saving—not individually, for it is too big a job, but collectively, thus assured of the success that comes of

(8) Literary Digest, April 23, 1921.

strength in numbers and in righteousness of purpose.

The Greek motto of the forbear and mentor Association of the Bar of the City of New York is this sentence from the politics of Aristotle: "Where the laws are not enforced there can be no free state, for it is essential that the law be supreme". These words are as profoundly true now as they were when written twenty-two centuries ago. In the present national and world ferment the cause of justice and righteousness and peace may have need of another spiritual uprising by the profession specially charged with the regulation and enforcement of government by law".

DANIEL W. IDDINGS.

Dayton, Ohio.

INSURANCE—AUTOMOBILE THEFT.

LEDVINKA v. HOME INS. CO OF NEW YORK.

115 Atl. 596.

Court of Appeals of Maryland. Nov. 17, 1921.

Where the seller's instructor who had been sent to instruct insured how to operate the automobile, after starting to return, used the car for his own purposes and wrecked it, the instructor's acts, while an abuse of confidence placed in him, did not amount in law to larceny, in the absence of evidence of an intention to steal the car, so that the loss of the car was not covered by a policy insuring it against "theft, robbery or pilferage," for these words all describe some form of larceny; "theft" being a popular term for larceny, "robbery" being larceny from the person, accompanied by violence or putting in fear; "pilferage" meaning stealing, and it being essential to the crime of "larceny" that there be a fraudulent taking from the possession of another without his consent.

OFFUTT, J. Charles S. Ledvinka, on december 19, 1919, purchased from the Colonial Garage & Repair Company of Baltimore a secondhand automobile fo $800 and certain additional equipment for $200, of which sums he paid $400 in cash and gave notes for the balance. The contract for the sale of the automobile contained, among others, this clause: "It is understood and agreed that title of ownership of car * * * does not pass to me until final cash payment is made."

After purchasing the car Ledvinka took out an insurance policy from the Home Insurance Company of New York, the appellee in this case, insuring him to the extent of $1,000 against its loss through "theft, robbery or pilferage." This policy was issued upon the condition that it should be "null and void" if the assured's interest in the car were "other than unconditional and sole ownership," or if it were "incumbered by any lien or mortgage," except as stated in a warranty contained in the policy.

At the time the appellant bought the automobile, the vender agreed to "give him a man to teach him how to drive it," and John C. Alderhardt, the chauffeur furnished by the company, under that agreement brought the car to the appellant's home four or five times, and gave him lessons in driving it, and on one of these occasions the appellant directed Alderhardt to bring the automobile to his home on Sunday, January 11, 1920, for another lesson. The chauffeur was to bring the automobile from the garage of the Colonial Garage & Repair Company, where it had remained from the time appellant had purchased it from that company. The chauffeur came on that day at about 10 o'clock in the morning, and was with the plaintiff in the automobile for about two hours, teaching him how to operate it It was then agreed between them that the chauffeur should return with the car at 2 o'clock in the same afternoon to give the appellant a final lesson. Alderhardt did not come at the hour named, and the appellant was later told that the car had been wrecked, and Alderhardt, the chauffeur, fatally injured in an accident on the Annapolis road some time during that afternoon.

After he learned of the damage to his automobile the plaintiff filed with the appellee a claim for the loss he had suffered, on the theory that the chauffeur had stolen the car, and that the loss was therefore covered by the policy of insurance. The insurance company refused to pay the claim, and the plaintiff then instituted this action in the Baltimore city court to recover the amount he claimed to be due him under the policy. At the close of the plaintiff's case, the jury, under the direction of the court, returned a verdict for the defendant, and from the judgment entered on that verdict this appeal was taken.

The only question presented by the record for our consideration is whether under the facts stated the plaintiff was entitled to recover in that suit against the defendan.t There were set up three defenses to the appellant's

claim; one that the car had not been stolen at all; two that, if stolen, the theft was committed by a person in the assured's employment, and three that at the time the policy was issued the appellant did not have the legal title to the automobile, and the policy was for that reason void, because the appellant had taken it upon the expressed condition that it should be "null and void" if his interest in the automobile were other than unconditional or sole ownership, or if it was when the policy issued, or afterwards became incumbered by any lien or mortgage, except as stated in the assured's warranty, which warranty was that it was "fully paid for by him and was not mortgaged or otherwise incumbered," whereas in fact the legal title to it had been retained by the Colonial Garage & Repair Company to insure the payment of the balance of the purchase money due on it.

Because of its relation to the other questions we will first consider the proposition that Alderhardt was in Ledvinka's employment. There is nothing in the record to sustain the contention that he was so employed. It is true that the proprietor of the company from which Ledvinka bought the car testified that Alderhardt was not in his employ on the day in question, but the company had sent him to Ledvinka in accordance with its understanding to furnish him a chauffeur to teach him how to operate the car, which undertaking was a part of the consideration for the purchase of the car. The mere fact that Ledvinka gave him "tips" did not make the chauffeur his employee any more than would the casual tipping of a railway porter by a passenger make the porter the passenger's employee. Alderhardt was intrusted with the car by the company, and by it sent to perform a promise it had made, that is, to teach the purchaser of the automobile how to drive it, and for the purposes of this case it must be assumed that Alderhardt was its agent, and not in the service or employment of Ledvinka.

"Service" and "employment" are words commonly and constantly used, "and therefore ought to be received as understood in common parlance" (20 C. J. 1245), and when so received are generally associated with the idea of selection and compensation. But neither of those elements can be found in the relation between Ledvinka and Alderhardt. Alderhardt was selected by the garage company, and if compensated at all was compensated by it. The object of his employment was the instruction of Ledvinka, who neither selected nor compensated him for the employment. Alderhardt was not therefore either in the service or the employment of Ledvinka. McCluskey v. Cromwell, 11 N. Y. 593, 599.

Assuming then, under the circumstances of this case, that Alderhardt was not in the employment or service of the appellant, the remaining questions to be considered are whether the policy of insurance upon which this action was brought was a valid and subsisting contract at the time the loss of which the appellant complains, occurred, and, if so, whether that loss was due to "theft, robbery or pilferage."

The uncontradicted, and indeed the only, testimony in the case shows that the appellant bought the automobile on December 11, 1919, under a contract of conditional sale, under the terms of which the legal title to it was to remain in the vendor until the balance of the purchase money was paid. This balance consisted of $400, and was evidenced by four promissory notes each one for $100, payable in 30, 60, 90, and 120 days after date. These payments he made as they became due. In the policy of insurance, the term of which was from December 31, 1919, to December 31, 1920, the assured agreed that the policy should be "null and void" if his interest in the property assured were other than "unconditional or sole ownership," or if it were incumbered by any lien or mortgage except as stated in "warranty No. 5 or otherwise indorsed" on the policy. In "warranty No. 5" it was stated that the automobile was "fully paid for by the assured," and was not mortgaged or otherwise incumbered except as follows—no exception." From the appellant's own testimony he paid the notes given for the installments of the unpaid balance of the purchase money "as they matured." None of them matured, however, until after the insurance policy issued, and therefore at the time it issued Ledvinka was not the unconditional and sole owner of the car, because the vendor held the legal title to it to insure the payment of the balance of the purchase money. If the language of the policy has any meaning at all, and if the provisions of the contract are to be given any effect, in the absence of any testimony tending to show that the warranties and representations as to the assured's interest in the car were made under circumstances from which it could be inferred that they were induced by fraud, surprise, or mistake, it follows that the effect of the misrepresentations to which we have referred was to annul and avoid the policy. For while there is some conflict in the decisions elsewhere as to whether the purchaser of personal property under a conditional contract of sale is the sole and unconditional owner thereof (20 L. R. A. [N. S.] 779 note),

there can be no question as to the rule in force in this state, since the decision in Westchester Ins. Co. v. Weaver, 70 Md. 542, 17 Atl. 402, 5 L. R. 478, in which this court said:

"The sale by Willig & Co. to the plaintiff was a conditional sale, and the title did not vest in the plaintiff until all the conditions had been complied with, and he was not, as the policy expressly required him to be, the unconditional owner of it at the time of the insurance. The clause in the instrument of sale which requires the plaintiff to pay the full value, in case of the destruction by fire, does not affect the question. The terms of the policy required him to be the unconditional owner, at the time of the insurance, and this, it appears, he was not."

And while there is some conflict in the decisions the weight of authority supports that view. Ballard v. Globe & Rutgers Fire Ins. Co., 237 Mass. 34, 129 N. E. 290; Springfield F & M. Ins. Co. v. Chandlee, 41 App. D. C. 209; 14 R. C. L. 1059; Insurance Co. v. Erickson, 7 Ann. Cas. 499.

But even if it could be assumed that the policy was in force at the time the appellant suffered the loss for which he seeks to recover in this case, the action could not be maintained, because the record contains no evidence to support his contention that his loss was due to the "theft, robbery or pilferage" of the automobile referred to. The words "theft," "robbery," and "pilferage" all describe some form of larceny. "Theft" is a "popular term for larceny" (Bouvier L. Dict.; Hochheimer's Cr. L. par. 355); "robbery" is larceny from the person, accompanied by violence or by putting in fear (1 Leach, 195; Com. v. Humphries, 7 Mass. 242); while "pilferage" means stealing (Becket v. Sterrett, 4 Blackf. [Ind.] 499, 500), or petty larceny (Bouvier L. Dict.). Larceny has been defined as the "fraudulent taking and carrying away of a thing without claim of right, with the intention of converting it to a use other than that of the owner without his consent." 2 Wharton, Cr. L. 1313 (11th Ed.). It is essential to the crime of larceny that there be fraudulent taking from the possession of another, without his consent. Worthington v. State, 58 Md. 403, 42 Am. Rep. 338; Canton Bank Co. v. American Bond. Co., 111 Md. 45, 73 Atl. 18 Ann. Cas. 820; Williams v. Fidelity Co., 105 Md. 490, 66 Atl. 495.

Applying these principles to the facts before us, we cannot say that Alderhardt's action in driving the car on the Annapolis road on the day in question amounted in law to larceny. His possession of it was that of a bailee, and not that of a servant, and its possession had been intrusted to him both by the appellant and the garage company, and does not appear that he committed any fraud in obtaining such possession, and as the general rule is that in order to convict of larceny, under such circumstances it is necessary to prove a "fraudulent intention on the part of the accused at the time of the bailment by which fraud he obtained such special possession" ([11th Ed.] Wharton, Cr. L. 1418), it follows that his act did not constitute larceny. When the appellant dismissed Alderhardt at 12 o'clock, he did not tell him to take the car back to the garage, but only told him to return with it at 2 o'clock in the afternoon; that is, he left it in Alderhardt's possession, without giving him any directions at all as to where the car was to be taken or what was to be done with it during that time, but left those matters to the discretion of the chauffeur; and, while the chauffeur abused the confidence thus placed in him, and used the property intrusted to his care for his own pleasure, his conduct, while wrongful and reprehensible, did not amount in law to larceny, in the absence of any evidence tending to show an intention of stealing the car; and, while he acted in a reckless and wanton disregard of the appellant's rights and interests, it does not appear that he did so with any expectation of personal gain, or that he intended to permanently convert the automobile to his use.

Under such circumstances, in our opinion, the appellant failed to show that the loss of which he complains was due to the "theft, robbery or pilferage" of the automobile. Gunn v. Globe & Rutgers F. Ins. Co., 24 Ga. App. 615, 101 S. E. 691.

Finding no error in the rulings of the lower court, the judgment appealed from will be affirmed, with costs to the appellee.

NOTE—*What Constitutes Theft, Robbery or Pilferage of Automobile.*—Where plaintiff's automobile was taken from his garage by some one unknown and was returned so damaged as to require repairs to various parts, and with some tools missing, it was held that such damage and loss were not within the terms of an insurance policy covering theft, robbery or pilferage. Felgar v. Home Ins. Co., 207 Ill. App. 492.

The plaintiff's automobile was insured by defendant against loss or damage by theft, robbery, or pilferage. The machine was kept at a garage, and one evening about eight o'clock several boys took it out of the garage, unlawfully and without the consent of anyone, for the purpose of taking a joy ride, and while using the machine, they drove it into a fence and wrecked it, and abandoned it where it was wrecked. It was held that recovery could not be had, there being no intent to steal the car, and judgment for the plaintiff was reversed. Michigan Com'c'l Ins. Co. v. Wills, 57 Ind. App. 256, 106 N. E. 725.

The plaintiffs carried a policy on their automobile insuring them against loss in excess of $25 on any single occasion, resulting from the theft of the automobile by persons other than those in the employ, household, or service of

the assured. While the policy was in force plaintiffs placed the automobile in a paint shop in Missoula, Mont., and while it was there it was taken by two employees of the paint shop, and by them driven to De Smet and damaged. The machine was taken by the employees at the close of the working day, while it was still light, without the consent of their employer or of the plaintiffs, after the shop had been locked by the employer, ran it to a point near De Smet, where an accident occurred that caused the damage. Help was then secured by telephone from a public garage, and the car was towed back to the paint shop at Missoula. When the man arrived from the public garage he found both employees standing by the damaged automobile, which was headed towards Missoula. Both employees continued to work at the point shop a considerable time after this occurrence. One of the employees testified that they took the car for a "joy ride", without any intention of stealing it; that they had driven to De Smet and had started back to Missoula, when the car "blew up;" that they immediately telephoned to the garage in Missoula, and waited until help came; that they secured gasoline from the paint shop; that they were seen leaving with the car by employees of a laundry; and that they took the car when the owner of the shop and the owners of the car would not likely see them.

It was held that there was no evidence from which it could be inferred that it was the intention of the employees to steal the car, and that, therefore, no recovery for the damage to the car could be had under the policy. "The fact," said the court, "that the taking was altogether wrongful, and that it was the intention of the employees to appropriate the car to their own use during the ride, and that extent to deprive the owners of their property, are not sufficient to constitute their acts larceny." "They must have had criminal intent—the intention to steal the car, without which the act of taking, however reprehensible and wrongful, amounted only to a trespass or a civil wrong." Valley Mercantile Co. v. St. Paul F. & M. Ins. Co., 49 Mont. 430, 143 Pac. 559, L. R. A. 1915 B 327 (1914).

Further on this subject see Berry, Automobiles (3rd ed. ch. 30).

HUMOR OF THE LAW

In an endeavor to put an end to "bootlegging," says R. B. Williamson of Sylvester Ga, in the docket, it has become an almost universal custom in this and surrounding jurisdictions for the court to ask a party accused with "having whiskey" to tell where he secured the liquor.

Of course, none of the defendants are going to give information which will result in the arrest of the party from whom the liquor was obtained, and the usual answer is: "I bought it."

Then the question follows: "Who sold it to you?" and among the darkies of this country the answer is invariably: "I got it from a man, a white man on the Moultrie Road," or "on the River Road"—depending on whether the negro is from the northern or southern portion of the county. "I never had seen the man before, and ain't seen him since, and I don't know him; he just stopped his Ford and asked me, did I want to buy some whiskey, and I said, 'Yes,' and I got it."

Of course, on this information the officers cannot arrest any one for selling whiskey, and the negro knows it.

Recently an old darky pleaded guilty to having in his possesion a small quantity of whiskey, and, when the court was about to pass sentence upon him, asked him:

"Well, Henry, you art from the southern part of the county; I suppose you got your liquor from a man in a Ford on the Moultrie Road?"

The darky promptly answered: "No. sir, he lived down near Bridgeboro."

The Court: "Was he a negro or a white an?"

Defendant: "He was a nigger, Judge; yas, sir."

The Court: "Of course, you didn't know him, never saw him before, and never have since; that is right, isn't it?"

Defendant: "No, sir, Judge; I knowed him right well."

The Court: "What did you say his name was?"

Defendant: "Well, now, Judge, I don't mind telling you-all dat nigger's name, 'cause a mule done flung him 'gin a tree last December an' kilt him; yas, sir, his name was Rufus Jackson."

This, of course, convulsed the court with laughter, and I am afraid it has set another precedent, for if my prediction is correct the darkies will hereafter pick out dead men to buy their liquor from. It's safer for both parties.

In an examination a schoolboy gave this definition: "Holy matrimony is a divine institution for the provocation of mankind."—*Case and Comment.*

"What, giving up already?" said a gentleman to a young angler. "You must bring a little more patience with you next time, my boy."

"'Taint patience I'm out of, mister; it's worms," was the reply.

"My daughter is the initiative and my wife is the referendum."

"And where do you come in?"

"Oh, I'm the recall. They recall my existence whenever the bills come in."

WEEKLY DIGEST.

Weekly Digest of Important Opinions of the State Courts of Last Resort and of the Federal Courts.

Copy of Opinion in any case referred to in this Digest may be procured by sending 25 cents to us or to the West Pub. Co., St. Paul, Minn.

1. **Adverse Possession**—Against State.—The only present exception to the common-law rule that adverse possession does not run against the state and its subdivisions relates to the maintenance of buildings and fences upon any way or land appropriated for public use for 40 years or more, under Rev. St. 1916, c. 24, § 106, and this gives title only to the extent of the occupation.—Phinney v. Gardner, Me., 115 Atl. 523.

2. **Attorney and Client**—Attorney's Fee.—Where attorneys were prevented by their client, without fault on their part, from completing their employment, they can recover as if the contract had been fully performed.—Thompson v. Stearns, Mo., 234 S. W. 1059.

3. **Automobiles**—Collision.—Where the speed and manner in which an automobile is driven when a collision occurs is one of the issues to be determined by a jury upon conflicting evidence, testimony tending to show that one of the colliding cars was being driven on a public road in a dangerous or uncertain manner, or at an extraordinary rate of speed, a few minutes before the collision, should, when offered, be submitted to the jury.—Wilson v. Fleming, W. Va., 109 S. E. 810.

4.——Contributory Negligence.—It was an automobile driver's duty, upon entering street car tracks and driving lengthwise thereon, to make observation at the time of entry and from time to time thereafter, in order to discover an approaching car so as to enable him in time to give way to such car.—Kornwolf v. Milwaukee Electric Ry. & Light Co., Wis., 185 N. W. 546.

5.——Due Care.—In an action for the death of a pedestrian struck by defendant's automobile on a highway, an instruction that due care requires the operator of a motor vehicle, when he sees a pedestrian in or about to enter his course, to sound his horn, or otherwise give warning, held not erroneous.—Demonde v. Targett, Conn., 115 Atl. 470.

6.——Duty to Guest.—The owner of an automobile is not liable for damages to an invited guest riding therein for injuries sustained by the latter, due to the turning over of the machine because of a defective spring, even though it was a second-hand machine and the spring was repaired with old parts.—O'Shea v. Lavoy, Wis., 185 N. W. 525.

7.——Mortgage.—Mortgagor's removal of a mortgaged automobile to another state without mortgagee's consent held violative of Cr. Code 1912, § 447, prohibiting a person from selling or disposing of mortgaged personal property without mortgagee's consent.—State v. Knight, S. C., 109 S. E. 803.

8.——Railroad Crossing.—Automobile truck driver's duty to look for approaching train before attempting to cross track was not discharged if he looked only at a point 300 feet or more from the track and then calculated that, at the rate of speed prescribed by ordinance, a train not then in view would not reach the crossing in time to interfere with his crossing the track.—Holtkamp v. Chicago, B. & Q. R. Co., Mo., 234 S. W. 1004.

9.——Railroad Crossing.—Though the presence of an automobile on a highway crossing over the railroad should have been anticipated by the negligent operators of a train, they could not have anticipated that the automobile, when struck by the train, would be thrown against a switch stand, thereby turning the switch and causing the train to collide with a string of cars standing on the switch, so that the negligence was not the proximate cause of injuries resulting from the collision with the cars.—Engle v. Director General of Railroads, Ind., 133 N. E. 138.

10.——Railroad Crossing.—In an action for death of an automobile driver struck by an interurban train, where there was evidence that the warning bells and lights on the automatic signal were not working, that the view of the track was obstructed by a shelter station and that the approach of the train had not been heralded by a whistle, held, that the question of contributory negligence in crossing the track was for the jury.—Swanson v. Puget Sound Electric Ry., Wash., 202 Pac. 264.

11. **Bailment**—Express Contract.—Where defendant left hay stored in the barn on premises of which plaintiff became lessee, without any agreement as to the price for storage, and plaintiff subsequently wrote defendant that unless the hay was removed specified prices would be charged for storage, defendant's failure to reply was not an acceptance of such price as a matter of law so as to create a contract, as a mere failure to object cannot be controverted into an acceptance unless the offeree has previously so agreed, and the failure to remove the hay could be referred to the subsisting implied contract.—Bowley v. Fuller, Me., 115 Atl. 466.

12.——"Temporary Use."—The renting or hiring of property for "temporary use" within Civ. Code 1912, § 3740, requiring agreements between bailor and bailee to be in writing, and to be recorded in same manner as chattel mortgages, and providing that the requirement shall not apply to "persons renting or hiring property for temporary use," is a renting or hiring of property for such length of time as is not reasonably calculated to mislead subsequent creditors and purchasers into the belief that the person in possession is the owner; the word "temporary" not being used in contradistinction to the word "permanent."—Gulf Refining Co. v. McCandless, S. C., 109 S. E. 801.

13. **Bankruptcy**—Set-Off.—A creditor is not entitled to set off against the trustee in bankruptcy, representing the bankrupt's estate, a sum retained by such creditor representing the value of grain received by the creditor from the debtor as a bailment, with knowledge of the debtor's insolvency, and within four months of the filing of the petition in bankruptcy.—Hockman v. Elliott & Myers, Neb., 185 N. W. 433.

14. **Banks and Banking**—Draft.—A bank, which collected a draft as agent for the drawer, having breached a duty which it owed the drawer, if it was not guilty of conversion, by withholding remittance at request of the drawee, accompanied by statement of defect in the goods for which the draft was drawn, was not entitled to interplead the drawer, when sued by the drawee for the money.—Commercial Savings Bank & Trust Co. v. A. Z. Bailey Grocery Co., Ala., 90 So. 48.

15.——Transmission by Wire.—That one delivering money to a telegraph company for transmission by wire executed an identification waiver, providing that the payee should not be required to produce positive evidence of personal identity, and that the company might pay the money to such person as its agent believed to be the payee, did not relieve the company

from the exercise of reasonable care in identifying the person to whom the money should be paid or in arriving at a belief as to his identity; and if it paid the money to an impostor as a result of failure to exercise reasonable care, it was liable to the sender.—Western Union Telegraph Co. v. Lapenna, Ind., 133 N. E. 144.

16. **Bills and Notes**—Possession.—In an action on promissory notes secured by a mortgage, where the purchaser at foreclosure sale who held the notes and mortgage as collateral for a debt owing him by plaintiff, deducted the amount due and paid the balance of the purchase price to plaintiff, retaining possession of the notes and mortgage, which he subsequently delivered to defendant on redemption, leaving a balance due from defendant to plaintiff of the difference between the purchase price and the amount of the notes, the court properly refused a general charge to find for defendant, though the latter was in possession of the notes.—Watson v. Rollins, Ala., 90 So. 60.

17.——Time of Payment.—The time of payment as fixed by a written contract, such as a promissory note, may not be suspended or extended by a subsequent unexecuted oral agreement.—Rottman v. Hevener, Cal., 202 Pac. 329.

18.——Transfer.—Where the makers of a note have received and retained a benefit, and have made the note payable to the order of a bank and delivered it to a former officer of the bank to secure him on account of the indebtedness of one of the makers, which he had liquidated at the bank, the payee procuring the bank to indorse the note to him without recourse, held defendants were estopped to question the validity of the transfer of the note by the bank to the payee; Rev. St. 1919, § 11762, relating to the powers of bank officers, being inapplicable.—Webb v. Rolla Produce Co., Mo., 234 S. W. 1068.

19. **Bridges**—Notice of Injury.—A notice to a town of injuries from an alleged defective bridge, which was dated July 3, 1919, and stated the injuries were received on Sunday, June 15th, without stating the year, was insufficient to comply with the requirement of G. L. 4617, that the time be stated, since the selectmen cannot be required to reckon back and ascertain that Sunday could not fall on June 15th in any other year than 1919 since 1913.—Louthood v. Town of Cambridge, Vt., 115 Atl. 497.

20. **Brokers**—Commission.—Though property was listed with brokers for sale for cash, and they could not change the terms, the owner could agree to different terms if he saw fit, and if he and a customer procured by the broker agreed on terms which were satisfactory to the owner, the brokers became entitled to their commission.—Jutras v. Boisvert, Me., 115 Atl. 517.

21. **Carriers of Goods**—Attorney's Fees.—The attorney fee allowed is in the nature of reimbursement of costs, and the law authorizing it is not unconstitutional as providing a penalty.—Eckman Chemical Co. v. Chicago & N. W. Ry. Co., Neb., 185 N. W. 444.

22.——Delivery.—Railroad required to deliver goods to consignee named in non-negotiable bill of lading, notwithstanding shipment by consignor's agent to defraud consignor.—Hartford Distillery Co. v. New York, N. H. & H. R. Co. Conn., 115 Atl. 488.

23.——Lien.—A carrier waived its lien, if it ever had any, on rails delivered to it, where, on demand for the rails by a pledgee, it failed to set up any lien, and when sued in replevin set up no claim of a lien.—Yokohama Specie Bank v. Trans-Oceanic Co., Cal., 202 Pac. 346.

24. **Chattel Mortgages**—Conversion.—Mortgagee suing mortgagor for conversion of mortgaged goods was entitled to punitive damages only if there was evidence from which the jury might have found that the conversion of any of the mortgaged property was in reckless and wanton disregard of the mortgagee's rights.—Symes v. Fletcher, Vt., 115 Atl. 502.

25. **Conspiracy**—Disloyalty to Country.—The fact that one may be suspected or accused of disloyalty and in sympathy with an alien enemy at war with his country, will not justify or warrant another citizen in combining with others to circulate false reports about the accused's business with the object of destroying it, so as to injure and damage him thereby.—Swartz v. Kay, W. Va., 109 S. E. 822.

26. **Contracts**—Signatures.—Persons signing a contract prepared for signatures of others to be affixed along with others, and intended, as shown by proof, to be signed by all of the parties named in it, are not bound until all have signed it, and incur no obligation if any of those who were to have signed it have refused to do so.—Ely v. Phillips, W. Va., 109 S. E. 808.

27.——Validity.—Under section 979, Rev. Laws 1910, providing that the seller of the good will of a business may agree to refrain from carrying on a similar business within a specified county, city, or part thereof, so long as the buyer or any person deriving title to the business from him carries on a like business, and where the parties entered into a contract for the sale of said business, and obligated the seller to refrain from engaging in like business in said town for five years, the contract was valid and enforceable by the purchaser, who was carrying on the business a year after the contract was entered into.—Wall v. Chapman, Okla., 202 Pac. 303.

28. **Corporations**—Assignment of Lease.—The reorganization by the bondholders of a corporation for which a receiver had been appointed under Rev. St. cc. 51, 57, is the organization of a new corporation in which the bondholders succeeded to the rights of the shareholders in the former corporation and to their equitable ownership of the assets under Rev. St. c. 51, §§ 88, 104 so that such reorganization operates as an assignment of a leasehold of the corporation by operation of law.—Clifford v. Androscoggin & K. R. Co., Me., 115 Atl. 511.

29.——Assignment of Patents.—In the absence of fraud or bad faith, the fact that, by reason of the failure of a corporation to develop patents assigned to it the stockholder's expectations of profits were blasted is no ground for rescission of their resolution, adopted and confirmed by the board of directors, to issue stock in payment for the patents, and, the rights of creditors not being involved, the fact that the patents were not worth as much as the stock is no ground for rejecting or reducing assignor's claim to share in the distribution of surplus assets of the corporation after it became insolvent; the transaction being one of bargain and sale between assignor and the company.—Robbins v. Ideal Wheel & Tire Co., N. J., 115 Atl. 525.

30.——Directors' Fraud.—Under section 487 of the Code of Civil Procedure, a demurrer that the plaintiff has not the legal capacity to sue will be overruled in an action by a stockholder to recover for a corporation a general loss due to fraudulent acts of directors, where the complaint alleges that the plaintiff is the owner of stock, although it does not allege that he is a stockholder of record.—Security Trust Co. v. Pritchard, N. Y., 190 N. Y. S. 871.

31.——Liability of Agent.—In an action on an implied contract to pay for coal converted to a corporation's use after being mined on plaintiffs' land, the agents of the corporation who mined and converted the coal and received the proceeds are not personally liable, if they were acting on behalf of the corporation and in its name.—Ward v. Guthrie, Ky., 234 S. W. 955.

32.——Promoters.—Promoters of a contemplated corporation secured contracts whereby all the stockholders of an existing corporation, owning and operating a cereal mill, agreed to exchange the shares of stock owned by them for an equal number of shares of the capital stock in the corporation to be formed. It is held that those who so contracted and to whom, in pursuance of such contracts, shares of capital stock in the new corporation were issued, do not stand in the position of stockholders subsequent to the incorporation, but they had an interest in the corporation promoted from the time the contracts were made, so that the promoters stood to them in a fiduciary capacity and could not secretly and without consideration issue capital stock for their own use.—American Barley Co. v. McCourtie, Minn., 185 N. W. 506.

33.——Vacancy.—The resignation of an officer of a private corporation terminates the office and a vacancy is at once created; and service of process on such resigned officer is not service on the corporation, notwithstanding a by-law providing the directors of said corporation shall hold office until their successors are duly elected.

—Western Pattern & Mfg. Co. v. American Metal Shoe Co., Wis., 185 N. W. 535.

34. **Divorce**—Alimony.—Under Civ. Code, § 139, providing that, when a divorce is granted for an offense of the husband, the court may make suitable allowance to the wife for her support during her life "or for a shorter period," and from time to time modify its order, where the interlocutory decree awarded alimony until the entry of final judgment, the court in making its final decree could grant future alimony, although the interlocutory judgment had then become final, and no authority to modify it was reserved therein, and section 139 was enacted before section 131 was changed to provide for interlocutory judgments.—Gates v. Gates, Cal., 202 Pac. 151.

35. **Executors and Administrators**—Executor de Son Tort.—In an action by an administrator against a bank where it is alleged that the plaintiff prior to the time of being appointed administratrix received $12,000 life insurance in her own name and turned the same over to the bank with the agreement that the bank should pay the secured debts against the estate out of said funds, and the evidence disclosed that said funds were deposited to the credit of the plaintiff, and she issued checks payable to third parties in payment of claims against said estate, and paid certain debts that were not secured, held, the bank would not be liable for unsecured debts paid by plaintiff by check upon the bank to third persons.—Shawnee Nat. Bank v. Van Zant, Okla., 202 Pac. 285.

36. **Ferries**—Negligence.—A ferry company, being a common carrier of passengers, is bound to use a high degree of care to protect a passenger from harm; and where a passenger was hit and injured by the "hook end" of a rope (used to draw trucks off the boat), which the evidence tended to show flew off of the electric power "winch" by reason of the careless operation and insufficient manning of the appliance, the question of the negligence of the ferry company was for the jury.—Williams v. Pennsylvania R. Co., N. J., 115 Atl. 447.

37. **Frauds, Statute of**—Agreement.—A promise to pay the debt of another, for the payment of which the promisee is secondarily liable, on the agreement of the promisee to repay the amount all in parol, is an original undertaking and not within the statute of frauds.—Timm v. Alton, Minn., 185 N. W. 510.

38. **Highways**—Abutting Owner.—An owner abutting on a highway has an easement of access in the highway, and may maintain a private action against others who have interfered with his easement by plowing up the highway in front of their respective lots and seeding it to grass, and thus cutting off the landowner's access to parts of a sea beach and other streets. Knothe v. Zinzer, Conn., 115 Atl. 477.

39. **Homestead**—Election.—Since the doctrine of election depends not on technical rules, but on principles of equity and justice and actual intention, an election made in ignorance of material facts is not binding when no other person's rights have been affected, nor is an intention to elect presumed if a person, though knowing the facts, acted in misapprehension of his legal rights and in ignorance of his obligation to make an election.—In re Iltz's Estate, Ore., 202 Pac. 409.

40.——Surviving Husband.—A surviving husband, who accepted a bequest under his deceased wife's will, ceased to occupy property he afterwards sought to have set apart to him as a homestead, received half the rents for over a year from tenants who occupied the premises with his consent, and made no objection to the filing of the administratrix's final account or the order of distribution, was not thereby estopped from asserting his claim to a homestead, where he was without knowledge of his right thereto until about the time he filed his petition, and no one was induced to alter his position to his injury or misled into such action that he would suffer injury if petitioner were allowed to change his attitude.—In re Leet's Estate, Ore., 202 Pac. 414.

41. **Indemnity**—Cause of Action.—A contract to indemnify and hold a surety harmless is not an original covenant or promise to pay, but is rather an understanding to pay or reimburse the surety or make good to him the actual loss which he may suffer; such a contract differing with one to pay legal liabilities in that an action cannot be brought upon the contract of indemnity and recovery had thereon until the liability indemnified against is discharged, whereas the cause of action on the contract to pay legal liability is complete when the liability attaches.—New England Equitable Ins. Co. v. Boldrick, Iowa, 185 N. W. 468.

42. **Insurance**—Delivery of Policy.—A life insurance policy insuring for a term of one year, and thereafter on payment of the stated premium on a specified date, which contained a clause that the insurance should not become effective until the policy was delivered and the premium paid, and which was not delivered until some time after the date of the policy, which was the date fixed for the annual payments, insures for the full period of one year from the date it took effect.—Landrigan v. Missouri State Life Ins. Co., Mo., 234 S. W. 1042.

43.——Full Amount Due.—A life insurance company is liable for the 12 per cent penalty imposed by Vernon's Sayles' Ann. Civ. St. 1914, art 4746, for delay in making payment, though it promptly tendered the amount admitted to be due on condition of acceptance in full settlement, if the amount tendered was not the full amount of the liability.—Manhattan Life Ins. Co. v. Stubbs, Tex., 234 S. W. 1099.

44.——Impairment of Obligation.—Pub. Acts 1919, c. 331, making companies insuring against loss on account of accidents for which insured is responsible absolutely liable, and prohibiting cancellation of the contract after insured has become responsible, is invalid as impairing the obligation of the contract as applied to a contract made before it took effect, authorizing cancellation by either party at any time, and providing that the insurer shall not be liable until the amount of the loss has been fixed by judgment or agreement with the insurer's consent.—O'Connor v. Hartford Accident & Indemnity Co., Conn., 115 Atl. 484.

45. **Intoxicating Liquors**—Possession.—In a prosecution for a violation of the liquor laws under Acts 37th Leg. (1921) 1st Called Sess. c. 61, wherein the possession of liquor becomes unlawful only when for the purpose of sale, evidence that liquor was found in defendant's buggy was insufficient to show that defendant had care, control, and management of it; the burden being on the state to prove that the possession was for the purpose of sale.—King v. State, Tex., 234 S. W. 1107.

46.——Rules of Evidence.—The rules of evidence in a prosecution for violation of the prohibition laws are the same as apply in every other criminal case.—Clark v. State, Ala., 90 So. 16.

47.——Search and Seizure.—The entry by an officer upon the premises of an individual occupied and used as a rooming house without a search warrant and the searching of the premises and the seizure of furniture, bedding, and fixtures in the rooming house without the process of any court authorizing such search and seizure was unauthorized, and such officer was a trespasser, and the property so seized under such circumstances should have been ordered returned to the occupant of the premises by the court in which forfeiture proceedings were instituted pursuant to such unlawful acts.—Hess v. State, Okla., 202 Pac. 310.

48.——Seizure.—Where five barrels of whisky were illegally seized without a search warrant from the residence of claimant, neither the whisky nor the knowledge obtained by the seizure is admissible in a criminal prosecution against him; but where he does not allege ownership, and it appears that the whisky was a part of a quantity withdrawn from storage under a permit by a drug company, and that claimant's possession was unlawful under the National Prohibition Act, he is not entitled to its return.—O'Connor v. Potter, U. S. D. C., 276 Fed. 32.

49.——Sufficiency of Proof.—In a prosecution for unlawfully distilling intoxicating liquors, evidence that a complete still, which apparently had been recently operated, was found near defendant's residence, and he was arrested at that point early in the morning, held sufficient, in connection with his explanation of the possession of whisky and of the large quantity of

sugar in his barn, to sustain a conviction.—Stewart v. State, Ala., 90 So. 49.

50.——Unlawful Sale.—The sale of intoxicating liquors being prohibited by law, a defendant, who purchased intoxicating liquors with money received from another for that purpose, and delivered the liquor to the party from whom he received the money, is guilty of the unlawful sale of the liquor, as all who aid in the commission of a misdemeanor are principals.—Walters v. State, Miss., 90 So. 76.

51. **Landlord and Tenant**—Erection of Fire Escape.—Under Act Cong. March 19, 1906, as amended by Act Cong. March 2, 1907, requiring the owner, entitled to the beneficial use, rental, or control of specified buildings, to erect fire escapes, which before amendment made the lessee, occupant, or person having possession also liable to its provisions, a tenant is not required to erect a fire escape, and he cannot, in the absence of any action prejudicial to his rights, voluntarily erect fire escapes and recover therefor from the landlord.—Goldwyn Distributing Corporation v. Carroll, U. S. D. C., 276 Fed. 63.

52.——Lease.—A hotel lease written in common words, made upon valid and sufficient consideration, involving no violation of law or public policy, is enforceable at the suit of either party, subject only to reformation or rescission upon showing fraud or mistake and that the parties disagree as to what was intended by "one-third of the receipts for guest rooms in excess of $200 per day," will not warrant its cancellation on the ground that the parties' minds never met.—Lamson v. Horton-Holden Hotel Co., Iowa, 185 N. W. 472.

53. **Master and Servant**—"Interstate Commerce."—Section man killed while walking toward his home during the noon hour, at a point not more than 3,000 feet from his work, held not engaged in "interstate commerce" at the time of his death; the accident not occurring in the course of his employment.—Pallocco v. Lehigh Valley R. Co., N. Y., 190 N. Y. S. 867.

54.——Negligence of Servant.—A company hiring a truck to carry employees to and from work is liable for the negligent act of the driver in backing the truck while loading, if it had the right to control the driver at such time, whether it chose to exercise that control or not, though the exercise of control should be considered in determining whether the right to control existed.—Simmons v. Murray, Mo., 234 S. W. 1009.

55. **Municipal Corporations**—Drainage.—A city having acted within its rights in elevating the grade of a street, thereby causing abutting lot to be lower than the level of the street, was not required to provide for the drainage of such abutting lot to protect it from storm and flood waters.—City of Globe v. Moreno, Ariz., 202 Pac. 230.

56.——Excavations in Streets.—The fact that the city was required to protect excavations in its streets did not relieve sewer contractors required by their contract to perform the work in a reasonably safe manner of the duty of protecting excavation in constantly used street to prevent people from falling therein.—Town of Flagstaff v. Gomez, Ariz., 202 Pac. 401.

57.——Fire Department.—Maintenance and operation of fire department by a municipality for the purpose of preventing and extinguishing fires is the performance of a governmental act, and it is not liable for the negligence of its firemen while engaged in the discharge of their duties as such.—Union Traction Co. of Indiana v. City of Muncie, Ind., 133 N. E. 160.

58.——Tree on Sidewalk Line.—Since the owner of property abutting on a street owns the fee to the center of the street subject to public easement, she has the right to remove at her pleasure a tree standing at the sidewalk line thereon.—Piculjan v. Union Electric Light & Power Co., Mo., 234 S. W. 1006.

59.——Water Rates.—A village did not, by making contract to furnish water to consumer at certain rate, surrender its governmental power to regulate the rates; the statute delegating the power having become a part of the contract.—Tonawanda Board & P. Co. v. City of Tonawanda, N. Y., 190 N. Y. S. 874.

60. **Railroads**—Openings Through Embankment.—Where landowner conveyed land to railroad for right-of-way, in consideration of an agreement on the part of the railroad to maintain openings through any embankment constructed to insure flow of water required in cultivation of rice, and cultivation of rice was abandoned for 20 years, and passageways through embankment were filled up, the landowner, in an action for damages, was not entitled to the cost of reconstructing the passageways, but only to the difference in the value of the land with the passageways and without them, where such difference was only $400 and the cost of reconstructing the passageways would be in excess of $3,000.—Clarke v. Aiken, U. S. C. C. A., 276 Fed. 21.

61.——Signals.—In the absence of any statutory requirement as to signals, it would still be the duty of a railroad to give reasonable and timely warning of the approach of its train to a crossing defectively constructed, at which the view was obstructed by a high bank.—Payne v. Burnett, Ind., 133 N. E. 147.

62. **Sales**—Conformance to Contract.—Under St. 1919, § 1684t44, subd. 3, providing that, where the seller delivers the goods sold mixed with goods of a different description, the buyer may accept those in accordance with the contract and reject the rest, or may reject the whole, the buyer of scrap iron could reject the whole of shipments containing boilers and sheet iron, or which were misdirected so as to impose demurrage charges, or for which drafts attached to the bill of lading were drawn for amounts exceeding the contract price.—Libman v. Fox Pioneer Scrap Iron Co., Wis., 185 N. W. 551.

63. **Schools and School Districts**—Interest on Warrants.—Since the objects of Laws 1921, c. 10, allowing interest on school warrants indorsed "no funds" at not to exceed 8 per cent, where to effect a greater parity of right between creditors of school districts and county creditors generally, who are entitled to interest-bearing warrants on depleted funds, under Civ. Code 1913, par. 2568, and to promote the public welfare by insuring the uninterrupted operation of the educational processes of the state, such chapter, which fixes no specific rate of interest on school warrants, when construed with the latter section, which fixes a rate of 6 per cent on all warrants not paid for want of funds, requires that all school warrants bear interest at 6 per cent.—Coggins v. Ely, Ariz., 202 Pac. 391.

64. **Specific Performance**—Option.—The vendee under an optional contract for the sale of lands cannot maintain a bill for specific performance of the contract until he had put the vendor in default by an acceptance and a tender of the purchase money, and, where the vendor is beyond the jurisdiction and there has been no tender prior to filing the bill, the vendee must tender the purchase money with his bill of complaint.—Morton v. Varnado, Miss., 90 So. 77.

65. **Subscriptions**—Not Revocable.—Subscribers in a certain town, who had agreed to take a certain number of tickets for a Chautauqua to be held in such town, could not revoke subscriptions, without liability, after Chautauqua operators, on the strength of such subscriptions and other subscriptions from individuals in other towns and cities for tickets for Chautauqua to be held in such other towns and cities, had incurred overhead expenses and had engaged entertainers to perform in the cities and towns in which the subscribers lived.—Ellison v. Keith, Wash., 202 Pac. 241.

66. **Taxation**—Trust Fund.—Retention by the grantor of the income of a trust fund is such a characteristic of possession and enjoyment of an estate as to be convincing evidence of an intent that the deed shall not take effect in enjoyment until the grantor's death, and to make the transfer subject to tax under Transfer Tax Law, § 220.—In re Cochrane's Estate, N. Y., 190 N. Y. S. 895.

67. **Vendor and Purchaser**—Implied Notice of Lease.—Possession of portion of building does not require a purchaser thereof to make inquiry, and is not alone implied notice to purchaser of the premises of the existence of an unrecorded lease for a period of more than seven years, under Rev. St. c. 78, § 14.—Hopkins v. McCarthy, Me., 115 Atl. 513.